

DONIKER CRUSHING CORP,)	AGBCA No. 2005-106-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Bryson Pickens, Operations Manager)	
Doniker Crushing Corp)	
51 McGill Hwy)	
HC33 Box 33359)	
Ely, Nevada 89301)	
)	
Representing the Government:)	
)	
Mary E. Sajna, Esquire)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
1220 S. W. Third Avenue, Room 1734)	
Portland, Oregon 97204-2825)	

DECISION OF THE BOARD OF CONTRACT APPEALS

February 22, 2005

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On October 12, 2004, the Board received a notice of appeal from Doniker Crushing Corp of Ely, Nevada (contractor), involving the U. S. Department of Agriculture, Forest Service (Government). The contractor contests the contracting officer's termination for default of the Whitman Crushing contract, No. 53-04M3-3-0058, under which the contractor was to mobilize, crush, and stockpile aggregate at five locations, each described with directions out of Baker City or Halfway, Oregon. After the contractor informed the Government that the contractor was "opting to postpone this project until fuel prices come back down" and the contractor did not respond to Government telephone calls, the contracting officer terminated the contract because the contractor had failed to perform (that is, did not meet certain completion dates) and did not provide adequate assurance of future performance. The contractor maintains that, because of the increase in fuel prices, it is entitled to an excusable delay, such that the termination for default is invalid.

The Board has jurisdiction over this timely-filed matter pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA). Following the submission of the appeal file, complaint, and answer, the parties engaged in informal discovery and discussions.

By letter dated February 17, 2005, the parties inform the Board that they have negotiated a settlement. They request a dismissal with prejudice.

DECISION

The Board dismisses with prejudice this appeal.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

HOWARD A. POLLACK

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

Issued at Washington, D.C.

February 22, 2005